



General Assembly

February Session, 2010

***Raised Bill No. 5504***

LCO No. 2330

\*02330\_\_\_\_\_ET\_\*

Referred to Committee on Energy and Technology

Introduced by:  
(ET)

***AN ACT CONCERNING SITING OF CELL PHONE TOWERS NEAR SCHOOLS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-50p of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2010*):

3 (a) (1) In a certification proceeding, the council shall render a  
4 decision upon the record either granting or denying the application as  
5 filed, or granting it upon such terms, conditions, limitations or  
6 modifications of the construction or operation of the facility as the  
7 council may deem appropriate.

8 (2) The council's decision shall be rendered in accordance with the  
9 following:

10 (A) Not later than twelve months after the deadline for filing an  
11 application following the request for proposal process for a facility  
12 described in subdivision (1) or (2) of subsection (a) of section 16-50i or  
13 subdivision (4) of said subsection (a) if the application was  
14 incorporated in an application concerning a facility described in

15 subdivision (1) of said subsection (a);

16 (B) Not later than one hundred eighty days after the deadline for  
17 filing an application following the request for proposal process for a  
18 facility described in subdivision (4) of said subsection (a) [,] and an  
19 application concerning a facility described in subdivision (3) of said  
20 subsection (a), provided the council may extend such [time] periods  
21 [may be extended by the council] by not more than one hundred  
22 eighty days with the consent of the applicant; and

23 (C) Not later than one hundred eighty days after the filing of an  
24 application for a facility described in subdivision (5) or (6) of said  
25 subsection (a), provided the council may extend such [time] period  
26 [may be extended by the council] by not more than one hundred  
27 eighty days with the consent of the applicant.

28 (3) The council shall file, with its order, an opinion stating in full its  
29 reasons for the decision. The council shall not grant a certificate, either  
30 as proposed or as modified by the council, unless it shall find and  
31 determine:

32 (A) Except as provided in subsection (c) of this section, a public  
33 need for the facility and the basis of the need;

34 (B) The nature of the probable environmental impact of the facility  
35 alone and cumulatively with other existing facilities, including a  
36 specification of every significant adverse effect, including, but not  
37 limited to, electromagnetic fields that, whether alone or cumulatively  
38 with other effects, impact on, and conflict with the policies of the state  
39 concerning [,] the natural environment, ecological balance, public  
40 health and safety, scenic, historic and recreational values, forests and  
41 parks, air and water purity and fish, aquaculture and wildlife;

42 (C) Why the adverse effects or conflicts referred to in subparagraph  
43 (B) of this subdivision are not sufficient reason to deny the application;

44 (D) In the case of an electric transmission line, (i) what part, if any,

45 of the facility shall be located overhead, (ii) that the facility conforms to  
46 a long-range plan for expansion of the electric power grid of the  
47 electric systems serving the state and interconnected utility systems  
48 and will serve the interests of electric system economy and reliability,  
49 and (iii) that the overhead portions, if any, of the facility are cost  
50 effective and the most appropriate alternative based on a life-cycle cost  
51 analysis of the facility and underground alternatives to such facility,  
52 are consistent with the purposes of this chapter, with such regulations  
53 or standards as the council may adopt pursuant to section 16-50t,  
54 including, but not limited to, the council's best management practices  
55 for electric and magnetic fields for electric transmission lines and with  
56 the Federal Power Commission "Guidelines for the Protection of  
57 Natural Historic Scenic and Recreational Values in the Design and  
58 Location of Rights-of-Way and Transmission Facilities" or any  
59 successor guidelines and any other applicable federal guidelines and  
60 are to be contained within an area that provides a buffer zone that  
61 protects the public health and safety, as determined by the council. In  
62 establishing such buffer zone, the council shall [take into  
63 consideration] consider, among other things, residential areas, private  
64 or public schools, licensed child day care facilities, licensed youth  
65 camps or public playgrounds adjacent to the proposed route of the  
66 overhead portions and the level of the voltage of the overhead portions  
67 and any existing overhead transmission lines on the proposed route.  
68 At a minimum, the existing right-of-way shall serve as the buffer zone;

69 (E) In the case of an electric or fuel transmission line, that the  
70 location of the line will not pose an undue hazard to persons or  
71 property along the area traversed by the line;

72 (F) In the case of an application that was heard under a consolidated  
73 hearing process with other applications that were common to a request  
74 for proposal, that the facility proposed in the subject application  
75 represents the most appropriate alternative among such applications  
76 based on the findings and determinations pursuant to this subsection;  
77 and

78 (G) In the case of a facility described in subdivision (6) of subsection  
79 (a) of section 16-50i that is (i) proposed to be installed on land under  
80 agricultural restriction, as provided in section 22-26cc, that the facility  
81 will not result in a material decrease of acreage and productivity of the  
82 arable land, or (ii) proposed to be installed on land that is near a  
83 school, as defined in section 10-154a, that the facility will be not less  
84 than seven hundred fifty feet from such school.

85 (b) (1) Prior to granting an applicant's certificate for a facility  
86 described in subdivision (5) or (6) of section 16-50i, the council shall  
87 examine, in addition to its consideration of subdivisions (1) to [(5)] (3),  
88 inclusive, of subsection (a) of this section: (A) The feasibility of  
89 requiring an applicant to share an existing facility, as defined in  
90 subsection (b) of section 16-50aa, within a technically derived search  
91 area of the site of the proposed facility, provided such shared use is  
92 technically, legally, environmentally and economically feasible and  
93 meets public safety concerns, (B) whether such facility, if constructed,  
94 may be shared with any public or private entity [which] that provides  
95 telecommunications or community antenna television service to the  
96 public, provided such shared use is technically, legally,  
97 environmentally and economically feasible at fair market rates, meets  
98 public safety concerns, and the parties' interests have been considered,  
99 and (C) whether the proposed facility would be located in an area of  
100 the state which the council, in consultation with the Department of  
101 Environmental Protection and any affected municipalities, finds to be a  
102 relatively undisturbed area that possesses scenic quality of local,  
103 regional or state-wide significance. The council may deny an  
104 application for a certificate if it determines that (i) shared use under the  
105 provisions of subparagraph (A) of this subdivision is feasible, (ii) the  
106 applicant would not cooperate relative to the future shared use of the  
107 proposed facility, or (iii) the proposed facility would substantially  
108 affect the scenic quality of its location and no public safety concerns  
109 require that the proposed facility be constructed in such a location.

110 (2) When issuing a certificate for a facility described in subdivision

111 (5) or (6) of subsection (a) of section 16-50i, the council may impose  
112 such reasonable conditions as it deems necessary to promote  
113 immediate and future shared use of such facilities and avoid the  
114 unnecessary proliferation of such facilities in the state. The council  
115 shall, prior to issuing a certificate, provide notice of the proposed  
116 facility to the municipality in which the facility is to be located. Upon  
117 motion of the council, written request by a public or private entity  
118 [which] that provides telecommunications or community antenna  
119 television service to the public or upon written request by an interested  
120 party, the council may conduct a preliminary investigation to  
121 determine whether the holder of a certificate for such a facility is in  
122 compliance with the certificate. Following its investigation, the council  
123 may initiate a certificate review proceeding, which shall include a  
124 hearing, to determine whether the holder of a certificate for such a  
125 facility is in compliance with the certificate. In such proceeding, the  
126 council shall render a decision and may issue orders [which] it deems  
127 necessary to compel compliance with the certificate, which [orders]  
128 may include, but not be limited to, revocation of the certificate. Such  
129 orders may be enforced in accordance with the provisions of section  
130 16-50u.

131 (c) (1) The council shall not grant a certificate for a facility described  
132 in subdivision (3) of subsection (a) of section 16-50i, either as proposed  
133 or as modified by the council, unless it finds and determines a public  
134 benefit for the facility.

135 (2) The council shall not grant a certificate for a facility described in  
136 subdivision (1) of subsection (a) of section 16-50i [which] that is  
137 substantially underground or underwater except where such [facilities  
138 interconnect] facility interconnects with existing overhead facilities,  
139 either as proposed or as modified by the council, unless it finds and  
140 determines a public benefit for [the facility, in the case of such facility  
141 that is] a facility substantially underground [, and] or a public need for  
142 [such facility, in the case of such facility that is] a facility substantially  
143 underwater.

144 (3) For purposes of [subparagraph (A) of] this [subdivision] section,  
145 a public benefit exists [if such] when a facility is necessary for the  
146 reliability of the electric power supply of the state or for the  
147 development of a competitive market for electricity and a public need  
148 exists [if such] when a facility is necessary for the reliability of the  
149 electric power supply of the state.

150 (4) Any application for an electric transmission line with a capacity  
151 of three hundred forty-five kilovolts or more that is filed on or after  
152 May 1, 2003, [and] that proposes the underground burial of such line  
153 in all residential areas and overhead installation of such line in  
154 industrial and open space areas [affected by such proposal] shall have  
155 a rebuttable presumption of meeting a public benefit for such facility if  
156 the facility is substantially underground [,] and meeting a public need  
157 for such facility if the facility is substantially above ground. Such  
158 presumption may be overcome by evidence submitted by a party or  
159 intervenor to the satisfaction of the council.

160 (d) If the council determines that the location of all or a part of the  
161 proposed facility should be modified, it may condition the certificate  
162 upon such modification, provided the municipalities [, and persons  
163 residing or located in such municipalities,] affected by the modification  
164 and the residents of such municipalities shall have had notice of the  
165 application [as provided in] pursuant to subsection (b) of section 16-  
166 50l.

167 (e) In an amendment proceeding, the council shall render a decision  
168 [within] not later than ninety days of the filing of the application or  
169 adoption of the resolution initiating the proceeding. The council shall  
170 file an opinion with its order stating its reasons for the decision. The  
171 council's decision shall include the findings and determinations  
172 enumerated in subsection (a) of this section which are relevant to the  
173 proposed amendment.

174 (f) [A] The council shall serve a copy of the order and opinion issued  
175 therewith [shall be served] upon each party and publish a notice of the

176 issuance of the order and opinion [shall be published] in such  
177 newspapers as will serve substantially to inform the public of the  
178 issuance of such order and opinion. The name and address of each  
179 party shall be set forth in the order.

180 (g) In [making its decision as to] deciding whether [or not] to issue a  
181 certificate, the council shall in no way be limited by [the fact that] the  
182 applicant [may] already [have] having acquired land or an interest  
183 therein for the purpose of constructing the facility [which] that is the  
184 subject of its application.

185 [(h) For purposes of this section, a public need exists for an energy  
186 facility if such facility is necessary for the reliability of the electric  
187 power supply of the state.]

188 [(i)] (h) For a facility described in subdivision (1) of subsection (a) of  
189 section 16-50i [,] with a capacity of not less than three hundred forty-  
190 five kilovolts, [or greater, there] the presumption shall be [a  
191 presumption] that a proposal to place the overhead portions, if any, of  
192 such facility adjacent to residential areas, private or public schools,  
193 licensed child day care facilities, licensed youth camps or public  
194 playgrounds is inconsistent with the purposes of this chapter. An  
195 applicant may rebut this presumption by demonstrating to the council  
196 that [it] burying the facility will be technologically infeasible. [to bury  
197 the facility.] In determining such infeasibility, the council shall  
198 consider the effect of burying the facility on the reliability of the  
199 electric transmission system of the state and whether the cost of any  
200 contemplated technology or design configuration may result in an  
201 unreasonable economic burden on the ratepayers of the state.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2010	16-50p
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**Statement of Purpose:**

To prevent cell phone towers from being installed near schools.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*